PP lwn. PRAKASH RAJAGOPAL & SATU LAGI

MAHKAMAH RAYUAN, PUTRAJAYA
HADHARIAH SYED ISMAIL HMR
HASHIM HAMZAH HMR
AZMI ARIFFIN HMR
[RAYUAN JENAYAH NO: J-09-53-02-2023]
14 FEBRUARI 2024

Abstrak – *(i) Apa-apa yang membentuk satu 'senjata' tidaklah bergantung pada sifat sah penggunaannya tetapi, berdasarkan kapasiti dan cara penggunaannya, iaitu mendatangkan bahaya atau kecederaan. Dalam kes ini, kerusi plastik yang digunakan untuk menyerang mangsa-mangsa terangkum dalam kategori 'apa-apa senjata' bawah s. 148 Kanun Keseksaan; (ii) Walaupun Hakim Mahkamah Tinggi mempunyai kuasa, di peringkat rayuan, untuk mengakas sabitan dan hukuman untuk satu-satu pertuduhan apabila berpuas hati bahawa fakta kes yang dikemukakan oleh pihak pendakwaan tidak memenuhi inti pati pertuduhan, kuasa semakan tersebut, bawah s. 325 Kanun Tatacara Jenayah, walau bagaimanapun, tidak termasuk meminda seksyen pertuduhan asal menjadi seksyen pertuduhan baharu.*

UNDANG-UNDANG JENAYAH: *Kesalahan – Melakukan rusuhan hingga menyebabkan kecederaan – Tertuduh-tertuduh menyerang mangsa-mangsa dengan kerusi plastik – Mangsa-mangsa mengalami kecederaan luka kecil dan lebam – Sama ada elemen-elemen kesalahan dipenuhi – Sama ada kerusi plastik termasuk dalam definisi 'apa-apa senjata' bawah s. 148 Kanun Keseksaan*

PROSEDUR JENAYAH: *Semakan – Kuasa Mahkamah Tinggi – Rayuan oleh pihak pendakwaan – Tertuduh-tertuduh mengaku salah bawah s. 148 dibaca bersama-sama s. 34 Kanun Keseksaan ('KK') – Kesalahan melakukan rusuhan hingga menyebabkan kecederaan – Mahkamah Majistret menjatuhkan hukuman denda RM2,100, jika gagal bayar tiga bulan penjara – Pihak pendakwaan merayu terhadap keputusan Mahkamah Majistret – Mahkamah Tinggi mengguna pakai kuasa semakan, mengakas sabitan dan hukuman terhadap tertuduh-tertuduh dan menggantikannya dengan sabitan pertuduhan pindaan bawah s. 323 KK – Tertuduh-tertuduh dijatuhkan hukuman denda RM1,500, jika gagal bayar dua bulan penjara – Sama ada Mahkamah Tinggi boleh mengguna pakai kuasa semakan untuk meminda sabitan dalam kes pengakuan bersalah dan menjatuhkan hukuman bawah pindaan tersebut – Kanun Tatacara Jenayah, s. 325*

PERKATAAN & ISTILAH: *'apa-apa senjata' – Kanun Keseksaan, s. 148 – Tertuduh-tertuduh melakukan rusuhan dan melakukan serangan menggunakan kerusi plastik – Sama ada kerusi plastik termasuk dalam definisi 'apa-apa senjata' bawah s. 148*

Responden pertama dan kedua, bersama-sama tiga orang lagi yang masih bebas, telah merusuh di sebuah restoran dan melakukan serangan menggunakan kerusi plastik. Berikutan serangan tersebut, tiga mangsa mengalami kecederaan luka-luka kecil dan lebam. Responden-responden ditangkap dan dituduh di Mahkamah Majistret, kerana melakukan rusuhan, satu kesalahan bawah s. 148, dibaca bersama-sama s. 34, Kanun Keseksaan ('KK'). Responden-responden mengaku salah dan masing-masing dijatuhkan hukuman denda RM2,100, jika gagal bayar tiga bulan penjara. Tidak berpuas hati, perayu ('pihak pendakwaan') merayu terhadap hukuman tersebut di Mahkamah Tinggi. Hakim Mahkamah Tinggi ('HMT'), mengguna pakai kuasa semakan beliau, mengakas sabitan dan hukuman terhadap responden-responden dan menggantikannya dengan sabitan pertuduhan pindaan bawah s. 323 KK dan menjatuhkan, masing-masing, hukuman denda RM1,500, jika gagal bayar dua bulan penjara. Maka timbul rayuan ini oleh pihak pendakwaan terhadap responden kedua sahaja. Menyokong rayuannya, pihak pendakwaan membangkitkan isu (i) sama ada kerusi plastik termasuk dalam definisi 'apa-apa senjata' bawah s. 148 KK; dan (ii) sama ada, dalam rayuan oleh pihak pendakwaan terhadap hukuman yang amat berkurangan, HMT boleh mengguna pakai kuasa semakan, bawah s. 323 Kanun Tatacara Jenayah ('KTJ'), untuk meminda sabitan dalam satu kes pengakuan bersalah dan menjatuhkan hukuman bawah pindaan tersebut.

Diputuskan (membenarkan rayuan)
Oleh Azmi Ariffin HMR menyampaikan penghakiman mahkamah:

(1) Walaupun kerusi plastik, hakikatnya, bukan sejenis senjata, namun jika disalahgunakan, boleh mendatangkan kecederaan pada siapa-siapa sahaja, seperti yang berlaku dalam kes ini. Ketiga-tiga mangsa telah mengalami kecederaan luka dan lebam serta kesakitan pada tubuh badan mereka akibat pukulan dengan kerusi plastik. Oleh itu, kerusi plastik yang digunakan termasuk dalam kategori 'senjata' bagi maksud kesalahan bawah s. 148 KK. (perenggan 21)

(2) Hakim Mahkamah Tinggi mempunyai kuasa, pada peringkat rayuan, untuk mengakas sabitan dan hukuman untuk pertuduhan bawah s. 148 KK setelah berpuas hati bahawa fakta kes yang dikemukakan oleh pihak pendakwaan tidak memenuhi inti pati pertuduhan. Walau bagaimanapun dalam melaksanakan kuasa semakan tersebut, HMT tidak boleh meminda seksyen pertuduhan asal menjadi seksyen pertuduhan baharu, seperti yang beliau lakukan; apatah lagi merekodkan sabitan dan hukuman atas pertuduhan pindaan tersebut. Ini kerana s. 325 KTJ tidak memperuntukkan kuasa pada seorang hakim, atas semakan, untuk berbuat sedemikian. Setelah HMT mendapati elemen bawah s. 148 KK gagal dipenuhi oleh pihak pendakwaan, beliau sepatutnya mengetepikan

sahaja pengakuan salah responden kedua dan menggantikannya dengan pengakuan tidak bersalah dan seterusnya meremitkan kes tersebut ke Mahkamah Majistret untuk perbicaraan semula. (perenggan 27-29)

(3) Sabitan bawah s. 148 KK dan hukuman denda sebanyak RM2,100, gagal bayar tiga bulan penjara oleh Mahkamah Majistret dihidupkan semula. Keputusan Mahkamah Tinggi, yang mengetepikan sabitan dan hukuman yang dijatuhkan oleh Mahkamah Majistret dan menggantikannya dengan sabitan bawah s. 323 KK dan hukuman denda sebanyak RM1,500 gagal bayar dua bulan penjara, diketepikan. (perenggan 29)

English *Headnotes*

The first and second respondents, along with three others still at large, had rioted at a restaurant and launched attacks using plastic chairs. Three victims sustained minor injuries and bruises following the said attack. The respondents were arrested and charged at the Magistrates' Court, for taking part in a riot, an offence under s. 148 read with s. 34 of the Penal Code ('PC'). The respondents pleaded guilty and were each sentenced to a fine of RM2,100, in default three months' imprisonment. Dissatisfied, the appellant ('prosecution') appealed against the said sentence at the High Court. The High Court Judge ('HCJ'), in the exercise of His Lordship's revisionary power, overturned the conviction and sentence against the respondents and substituted the same with an amended charge under s. 323 of the PC and sentenced them each to a fine of RM1,500, in default two months' imprisonment. Hence, the present appeal by the prosecution against the second respondent only. In support of the appeal, the prosecution raised the issues of: (i) whether a plastic chair fell within the definition of 'any weapon' under s. 148 of the PC; and (ii) whether, in an appeal by the prosecution against a manifestly inadequate sentence, can the HCJ exercise his revisionary powers, pursuant to s. 323 of the Criminal Procedure Code ('CPC'), to amend a conviction in a guilty-plea case and proceed to mete out the sentence under the said amended charge.

Held (allowing appeal)
Per Azmi Ariffin JCA delivering the judgment of the court:

(1) A plastic chair, in reality, is not a weapon but, if misused, may cause injury to anybody, as what had happened in this case. The three victims sustained minor injuries and bruises and experienced pain on their body after being struck with the plastic chair. Therefore, the plastic chair fell under the category of 'weapon' within the offence under s. 148 of the PC.

(2) The HCJ had the power, at the appellate stage, to reverse the conviction and sentence for the charge under s. 148 of the PC, having been satisfied that the facts of the case, as adduced by the prosecution, did not satisfy the ingredients of the charge. However, in the exercise of the said revisionary power, the HCJ could not amend the section of the original charge to a section under a new charge, as His Lordship had done here; what's more to record a conviction and sentence based on the said amended charge. Section 325 of the CPC does not empower a judge, upon revision, to do so. Having found that the prosecution failed to fulfil the element under s. 148 of the PC, the HCJ ought to have set aside the guilty plea by the second respondent and substituted the same with one of not guilty and proceeded to remit the case to the Magistrates' Court for a retrial.

(3) The conviction under s. 148 of the PC and the sentence of fine in the amount of RM2,100, in default three months' imprisonment, meted out by the Magistrates' Court were reinstated. The decision of the High Court, in setting aside the conviction and sentence meted out by the Magistrates' Court and substituting the same with a conviction under s. 323 of the PC and a sentence of fine in the amount of RM1,500, in default two months' imprisonment, was set aside.

Kes-kes yang dirujuk:
DPP v. Salamat Mangon [1946] CLJU 4; [1946] 1 LNS 4 PC ***(dirujuk)***
Hajar Ishak v. PP [2000] 4 CLJ 46 HC ***(dirujuk)***
Mohammad Hassan v. PP [1997] 1 CLJ Supp 485; [1997] 1 BLJ 485 HC ***(dirujuk)***
Mohd Dalhar Redzwan & Anor v. Datuk Bandar, Dewan Bandaraya Kuala Lumpur [1995] 2 CLJ 209 CA ***(dirujuk)***
Nor Azman Ghadzali v. PP [2013] 1 CLJ 938 CA ***(dirujuk)***
PP v. Mahathir Muhammad [2013] 2 CLJ 50 CA ***(dirujuk)***
PP v. Rahmat Ghazali & Another Appeal [2021] 2 CLJ 207 CA ***(dirujuk)***

Perundangan yang dirujuk:
Corrosive and Explosive Substances and Offensive Weapons Act 1958, s. 2
Courts of Judicature Act 1964, s. 50(2)
Criminal Procedure Code, ss. 323(1), 325
Penal Code, ss. 34, 148, 323

Bagi pihak perayu - Subash Ramasamy & Chee Hui Bing; T/n Chand, Jag & Assocs
Bagi pihak responden - Sarulatha Paramavathar, TPR

[Nota Pengarang: Untuk kes Mahkamah Tinggi, sila lihat PP lwn. Prakash Rajagopal & Satu Lagi [2023] CLJU 344; [2023] 1 LNS 344 (diketepikan).]

Dilaporkan oleh Najib Tamby

PENGHAKIMAN

Azmi Ariffin HMR:

Pertuduhan

[1] Responden pertama dan responden kedua telah dituduh di atas pertuduhan berikut:

> Bahawa kamu bersama-sama yang telah dituduh pada 24/11/2019 jam lebih kurang 3.00 pagi bertempat di Restoran Nur Firdaus Taman Aman, Senai dalam Daerah Kulai di dalam Negeri Johar yang merupakan tempat awam telah terlibat dalam rusuhan sehingga mendatangkan kecederaan kepada Mohammad Azri Bin Masuri No KP: 900602-01-5271, Mohamad lskandar Bin Muslih No KP: 961209-01-6891 dan Mohamad Hanafee Bin Tawi No KP: 920325-01-6337 dengan menggunakan kerusi. Oleh yang demikian, kamu telah melakukan satu kesalahan di bawah seksyen 148 Kanun Keseksaan dibaca bersama seksyen 34 kanun yang sama.

Fakta Kes Secara Ringkas

[2] Pada 24 November 2019 jam lebih kurang 3 pagi bertempat di Restoran Nur Firdaus Taman Aman, Senai, Kulai, Johor, kedua-dua responden bersama-sama tiga orang yang masih bebas telah menyerang dan merusuh di tempat kejadian. Responden pertama dan kedua bersama-sama dengan dua rakannya telah menyerang pengadu dengan menggunakan kerusi plastik yang berada di restoran tersebut.

[3] Akibat serangan tersebut, tiga orang mangsa iaitu Mohammad Azri Masuri, Mohamad lskandar bin Muslih dan Mohamad Hanafee bin Tawi telah mengalami kecederaan luka kecil dan lebam di bahagian badan dan tangan.

[4] Bertindak di atas laporan polis yang dibuat, pada 25 November 2019, responden kedua telah ditangkap di Taman Senai Utama, Senai manakala responden pertama pula telah ditangkap pada 10 Ogos 2022 di Jalan Persiaran Teknologi, Taman Teknologi Senai, Johor.

[5] Pada 11 Ogos 2022, kedua-dua responden telah dituduh di Mahkamah Majistret Kulai, Johor di atas pertuduhan di bawah s. 148 Kanun Keseksaan dibaca bersama s. 34 Kanun yang sama.

[6] Pertuduhan telah dibacakan dan diterangkan kepada mereka di dalam Bahasa Malaysia. Kedua-dua responden mengaku salah, memahami sifat dan akibat pengakuan salah mereka. Fakta kes dan ekshibit yang dikemukakan turut diakui benar oleh mereka.

[7] Setelah mendengar rayuan peringanan dan pemberatan hukuman oleh kedua-dua pihak, Mahkamah Majistret telah menjatuhi hukuman denda RM2,100 jika ingkar bayar tiga bulan penjara bagi setiap responden.

[8] Tidak berpuas hati dengan keputusan tersebut, maka pada 14 Ogos 2022, perayu telah menfailkan notis rayuan (kandungan 37) di Mahkamah Tinggi Johor Bahru terhadap hukuman tersebut.

[9] Hakim Mahkamah Tinggi yang bijaksana dengan menggunakan kuasa semakan telah memerintahkan agar sabitan dan hukuman yang dijatuhkan ke atas kedua-dua responden diakaskan dan digantikan dengan sabitan di atas pertuduhan pindaan di bawah s. 323 Kanun Keseksaan. Kedua-dua responden dikenakan hukuman denda setiap seorang RM1,500 jika gagal bayar dua bulan penjara.

[10] Terkilan dengan keputusan tersebut, pada 23 Februari 2023, perayu telah menfailkan notis rayuan terhadap kedua-dua responden di Mahkamah Rayuan di atas keseluruhan keputusan Mahkamah Tinggi tersebut.

[11] Namun begitu, notis rayuan terhadap responden pertama telah dibatalkan pada 14 September 2023 kerana kegagalan perayu untuk menyerahkan notis rayuan tersebut kepada beliau. Oleh itu, rayuan di hadapan kami ini hanyalah terhadap responden kedua sahaja.

Petisyen Rayuan

[12] Merujuk kepada rekod rayuan di kandungan 12, alasan-alasan rayuan yang terkandung di dalam petisyen rayuan perayu adalah seperti berikut:

> Selaras dengan s. 50(2) Akta Mahkamah Kehakiman 1964, soalan-soalan undang-undang berikut perlu diputuskan oleh Mahkamah ini adalah:
>
> (1) "Samada kerusi plastik termasuk dalam definasi "apa-apa senjata" bagi maksud kesalahan di bawah seksyen 148 Kanun Keseksaan?"
>
> (whether a plastic chair falls within the definition of any weapon as provided for an offence under section 148 of the Penal Code?
>
> (2) Dalam suatu rayuan oleh Pendakwa Raya terhadap hukuman yang amat berkurangan, samada Hakim Mahkamah Tinggi boleh menggunapakai kuasa semakan di bawah seksyen 323 Kanun Tatacara Jenayah untuk meminda sabitan dalam suatu kes pengakuan bersalah dan selanjutnya menjatuhkan hukuman di bawah pertuduhan yang dipinda tersebut.
>
> (In an appeal by the Public Prosecutor against a manifestly inadequate sentence, can the High Court Judge exercise his power of revision under section 323 Criminal Procedure Code to amend a conviction in a plead guilty matter and proceed to sentence under the said amended charge?)
>
> Justeru, Perayu memohon Mahkamah Yang Mulia ini supaya mengenepikan keseluruhan keputusan serta hukuman yang dijatuhkan oleh Yang Arif Mahkamah Tinggi dan selanjutnya memerintahkan rayuan Pendakwa Raya diremit kembali ke

Mahkamah Tinggi untuk didengar semula di hadapan Yang Arif Hakim Mahkamah Tinggi yang lain atau apa-apa perintah lain sebagaimana yang difikirkan wajar dan adil oleh Mahkamah yang mulia ini.

Dapatan Mahkamah Tinggi

[13] Hakim Mahkamah Tinggi yang bijaksana di dalam alasan penghakimannya memutuskan seperti berikut:

[9] TPR yang terpelajar dalam hujahan bertulis/lisan menegaskan hukuman denda yang dijatuhi ke atas Responden-Responden tidak memadai. Puan Majistret itu terkhilaf apabila gagal menimbangkan kesalahan yang dilakukan oleh Responden-Responden di tempat awam dan memerlukan hukuman yang berbentuk deteran. TPR yang terpelajar turut merujuk kes *Goh Bok Seng v. PP* [1965] 2 MLJ 66 di mana bagi kesalahan yang sama, Tertuduh dijatuhi hukuman penjara 3 bulan.

[10] Sebaliknya peguam Responden-Responden menghujahkan Puan Majistret itu telah mengunakan budibicara yang betul semasa menjatuhi hukuman denda RM2,100.00 jika ingkar bayar 3 bulan penjara. Puan Majistret itu telah menimbangkan pengakuan bersalah Responden Responden dan kesalahan pertama Responden-Responden. Peguam Responden-Responden turut menghujahkan seksyen 148 Kanun itu memperuntukkan hukuman penjara atau denda atau kedua-duanya. Puan Majistret itu telah memilih hukuman denda dijatuhi ke atas Responden-Responden. Selanjutnya dihujahkan hukuman penjara bagi kesalahan seksyen 148 Kanun itu bukannya mandatori.

[11] Sebelum Mahkamah ini menyentuh isu hukuman dengan lebih lanjut, Mahkamah ini semasa mendengar rayuan ini turut menggunakan kuasa semakan yang diperuntukkan di bawah seskyen 323(1) Kanun Tatacara Jenayah. Sebelum Mahkamah ini menyentuh dengan lebih lanjut, eloklah diperturunkan peruntukan seksyen 148 Kanun itu yang berbunyi seperti berikut:

> *Any person who attends, takes part in or is found at any riot and who in his possession at such riot any firearm, ammunition, explosive, corrosive, injurious or obnoxious substance, stick, stone or any weapon or missile capable of use as a weapon of offence shall be punished with imprisonment for a term which may extend to five years or with fine or with both.*

[12] Berbalik kepada kes responden-responden, fakta kes yang dibentangkan oleh pendakwaan [P1] menunjukkan Responden-Responden mengunakan kerusi plastik yang berada di dalam Restoran tersebut. Persoalannya sama ada "kerusi plastik" termasuk dalam "any weapon" bagi maksud peruntukan s. 148 Kanun itu? Bagi merungkai isu ini, eloklah dirujuk prinsip *ejusdem generis* bagi menentukan adakah "kerusi plastik" termasuk dalam "any weapon" dan sama jenis dengan "stick" atau "stone".

A [13] Mahkamah ini merujuk *dictum* oleh Lord Campbell dalam kes *R v. Edmundson* (1859) 28 LJMC 213 di muka surat 215, Lord Campbel ada menzahirkan pandangannya berkaitan prinsip *ejusdem generis* seperti berikut:

> I accede to the principle laid down ... that, where there are general
B words following particular and specific *words, the general words must be confined to things of the same kind as those specified*.

[14] Mahkamah ini turut merujuk kes *Mohd Rosli Ani v. Pengerusi, Lembaga Pencegahan Jenayah & Ors* [2021] 1 LNS 676 di mana YA Collin Lawrence Sequerah H (pada ketika itu) berpendapat:

C > [76] The *ejusdem generis* rule is that *where general words follow specific words, such general words take their meaning from the specific words and the meaning of the general words is restricted to the same genus as the specific words*. See *Jambatan Merah Sdn Bhd v. Public Bank Berhad* [2014] 1 LNS 1657; [2015] MLJU 1208.

D [15] Berbekalkan prinsip-prinsip yang digariskan dalam nas-nas duluan yang dirujuk, mahkamah ini berpendapat "any weapon" bagi maksud peruntukan s. 148 Kanun itu perlulah merujuk kepada "stick" atau "stone". Sehubungan itu kerusi plastik tidak sama jenis dengan "stick" atau "stone". Kerusi plastik sifatnya merupakan perabot untuk tempat duduk. Kerusi plastik yang sedia ada digunakan untuk pengunjung
E restoran duduk sambil menikmati juadah yang dihidangkan. Mahkamah ini berpendapat kerusi plastik yang sempurna tidak termasuk dalam "any weapon" dan menyamai "stick" atau "stone". Mahkamah ini berpendapat perbuatan responden-responden mencederakan mengunakan kerusi plastik yang sempurna sifatnya tidak termasuk dalam kesalahan s. 148 Kanun itu.

F [16] Walaupun begitu, mahkamah ini mengakaskan sabitan dan hukuman ke atas responden-responden atas kesalahan s. 148 Kanun itu dan memindanya kepada pertuduhan pindaan iaitu mendatangkan cedera ke atas mangsa iaitu Mohammad Azri bin Masuri, Mohamad lskandar bin Muslih dan Mohamad Hanafee bin Tawi iaitu kesalahan di bawah s. 323
G Kanun itu.

[17] Mahkamah ini menjatuhi hukuman denda RM1,500 setiap responden dan jika ingkar bayar dua bulan penjara. Lebihan denda (jika ada) yang telah dibayar dikembalikan semula kepada responden-responden.

[18] Berdasarkan alasan-alasan yang diperincikan di atas, sabitan
H responden-responden atas kesalahan s. 148 Kanun itu diketepikan dan digantikan dengan sabitan di bawah s. 323 Kanun itu. Setiap responden dijatuhi hukuman denda RM1,500 tidak bayar dua bulan penjara. Rayuan hukuman oleh TPR yang terpelajar menjadi akademik sebaik kuasa semakan di bawah s. 323 KTJ digunakan.

I (penekanan ditambah)

Prinsip Undang-undang Berkaitan Kebenaran Untuk Merayu

[14] Undang-undang adalah mantap bahawa bagi kes yang berasal daripada Mahkamah Majistret, mana-mana pihak yang ingin membuat rayuan kepada Mahkamah Rayuan perlu terlebih dahulu memperolehi kebenaran mahkamah ini. Rayuan hanyalah terhad kepada persoalan undang-undang sahaja. Ini adalah selaras dengan kehendak peruntukan s. 50(2) Akta Mahkamah Kehakiman 1964.

[15] Prinsip undang-undang berkaitan perkara ini telah dijelaskan di dalam kes *PP v. Rahmat Ghazali & Another Appeal* [2021] 2 CLJ 207; [2020] MLJU 1954 di mana Mahkamah Rayuan menyatakan seperti berikut:

> [9] Section 50 gives jurisdiction to the Court of Appeal to hear appeals from criminal matters decided in the High Court and it includes appeals from Sessions Court and Magistrates Courts. However, section 50(2) provides a limitation to the manner that appeals emanates from Magistrates Court are brought to the Court of Appeal. It must be noted that section 50(2) provides generally and without qualification that "an appeal shall lie to the Court of Appeal, with leave of the Court of Appeal". It also enacts that "such appeal" shall only be confined to question of law.

[16] Di dalam kes *Nor Azman Ghadzali v. PP* [2013] 1 CLJ 938; [2013] 1 MLJ 486, Mahkamah Rayuan menyatakan seperti berikut:

> [12] From the express wording of s. 50 and in particular to sub-s. (2) thereof, for the Court of Appeal to be conferred jurisdiction two pre-conditions must be fulfilled by the applicant, namely:
>
> (a) a leave application must be filed within 14 days from the date of the High Court decision; and
>
> (b) it must be shown in the leave application the question of law which arose in the course of the appeal and the determination of which by the High Court has affected the event of the appeal.
>
> [13] The pre-requisites aforesaid was lucidly explained by Lamin Mohd Yunus PCA in *PP v. Pasupathy Kanagasaby* [2001] 2 MLJ 143; [2001] 2 CLJ 753 where he said:
>
> > When an accused person desires to appeal, the full force of sub-s. (2) comes into play. He has to apply for 'leave' and that his appeal must be confined to only questions of law which have arisen in the course of the appeal or revision and the determination of which by the High Court has affected the event of the appeal or revision.
>
> [17] The crucial element of 'question of law' must in our view relates to questions involving the interpretation of relevant and applicable legal principles. It is totally different from questions of facts which require references to facts and evidence and the inferences drawn from the facts. In essence questions of law are questions involving legal principles of wide applicability in diverse situations and not confined to any particular facts.

[17] Di dalam kes *PP v. Mahathir Muhammad* [2013] 2 CLJ 50; [2013] 1 MLJ 50, Mahkamah Rayuan melalui penghakiman yang disampaikan oleh Mohd Hishamudin HMR (beliau pada ketika itu) menyatakan seperti berikut:

> [20] The rationale for limiting the appeal to question of law only is not difficult to appreciate. The cases that emanate from the magistrate's courts are relatively less serious in nature as compared to cases dealt with by the session courts, and in most cases they involve only finding of facts. Hence, there is very minimal risk of real injustice if further appeals to the Court of Appeal should only be confined to questions of law.

Keputusan Kami

[18] Hanya terdapat dua persoalan undang-undang yang harus kami dimuktamadkan.

Persoalan Pertama

Sam Ada Kerusi Plastik Termasuk Dalam Definisi "Apa-apa Senjata" Bagi Maksud Kesalahan Di Bawah Seksyen 148 Kanun Keseksaan

[19] Tiada tafsiran spesifik yang diberikan mengenai perkataan "senjata/ weapon" di dalam Kanun Keseksaan. Seksyen 2 Corrosive and Explosive Substances and Offensive Weapon Act 1958 hanya mendefinisikan "Offensive Weapon" dan "Scheduled Weapon" sahaja sepertimana berikut:

> ... 2. In this Act, unless the context otherwise requires:
>
> "offensive weapon" includes any instrument which if used as a weapon of offence is likely to cause hurt;
>
> "scheduled weapon", 'means any offensive weapon specified in the Second Schedule'.
>
> Berikut diperturunkan Jadual Kedua tersebut:
>
> [Sections 2 and 12]
>
> 1. Any knife, sometimes known as a "flick knife", which has a blade which opens automatically by hand pressure applied to a button, spring or other device in or attached to the handle of the knife.
> 2. Any knife, sometimes known as a "gravity knife", which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force and which, when released, is locked in place by means of a button, spring, lever or other device.
> 3. Any whip manufactured from bicycle or motor cycle chains, or from any similar kind of chain work.
> 4. All kinds of knuckleduster.

5. Any blade or other instrument attached to or forming part of a bicycle pump, metal-pipe or stick, and concealed therein, which is capable of being used for cutting or stabbing.

6. Any knife-like instrument with three sharp edges and a sharp pointed tip, sometimes known as a "bearing-scraper".

7. Any small axe normally used as a weapon and commonly known as "kapak kecil".

8. Any sword, keris, parang or other knife which on any part of it is written, embossed, inscribed with or which otherwise bears any verse, word or character connected with or relating to any religion or belief.

9. Any sword or parang which is normally meant to be used as a weapon and not as an agricultural implement or household or garden tool.

10. Any spear or spearhead.

11. Any cross bow.

12. Any Patrolite, Stun Gun, Taser, Control Club or any such similar instrument, device or equipment operated by battery or electricity or any form or power.

[20] Bagi merungkai kekeliruan sama ada kerusi plastik adalah satu senjata ataupun tidak, maka rujukan sewajarnya dibuat kepada kes *DPP v. Salamat Mangon* [1946] CLJU 4; [1946] 1 LNS 4; [1946] 1 MLJ 155 di mana Murray Aynsley CJ (Singapura) menjelaskan persoalan ini seperti berikut:

> This gave rise to the question as to whether an offence had been committed. The meaning of the words 'offensive weapon' occurs in several Acts of Parliament as well as in local legislation and they give rise to difficulties in interpretation. There may be said to be two schools of thought. One school regards merely the primary purpose of the weapon used and, if that is not offensive, holds that it is not within the section. In this sense are the case of *George Cosans* [1785] 1 Leach 342; 168 ER 274 and the recent FMS case of *Sarban Singh* [1941] 10 MLJ 210.
>
> *On the other hand, in the case of James Johnson [1822] Russ & Ry 493; 168 ER 914, where the accused had used what appeared to be a common walking stick, the judge directed the jury that if the accused had used his stick by way of attack for the purpose of effecting a robbery it might be considered as an offensive weapon. In my opinion this is the correct view. Whether a weapon is offensive or not is a question of fact depending on the circumstances of each particular case*. Many things such as razors, parangs and pick handles have their legitimate and pacific uses but circumstances may show that that was not the use which the accused had in mind at the material time. For instance, where a man is found prowling round at night with a razor concealed in his sock or a parang about his person.
>
> (penekanan ditambah)

[21] Berdasarkan kepada autoriti di atas, adalah jelas bahawa "what constitute weapon depends not on the nature of its legitimate usage, but on its capacity, given manner of its use, to endanger life or inflict great bodily harm." Dengan kata lain, walaupun sifat kerusi plastik pada hakikatnya bukanlah sejenis senjata, namun jika disalahgunakan ianya boleh mendatangkan kecederaan kepada sesiapa sahaja sepertimana yang berlaku di dalam kes ini di mana ketiga-tiga mangsa telah mengalami kecederaan luka dan lebam serta kesakitan pada tubuh badan mereka akibat daripada pukulan dengan kerusi plastik tersebut. Sehubungan dengan itu, tidak dapat disangkal lagi bahawa kerusi plastik yang digunakan ini termasuk di dalam kategori "senjata" bagi maksud kesalahan ini.

Persoalan Kedua

Dalam Suatu Rayuan Oleh Pendakwa Raya Terhadap Hukuman Yang Amat Berkurangan, Sama Ada Hakim Mahkamah Tinggi Boleh Mengguna Pakai Kuasa Semakan Di Bawah Seksyen 323 Kanun Tatacara Jenayah Untuk Meminda Sabitan Dalam Suatu Kes Pengakuan Bersalah Dan Selanjutnya Menjatuhkan Hukuman Di Bawah Pertuduhan Yang Dipinda Tersebut

[22] Pada hemat kami, Mahkamah Tinggi sebagai mahkamah rayuan berhak di sisi undang-undang untuk melaksanakan kuasa semakan di bawah s. 323(1) Kanun Tatacara Jenayah for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of that subordinate court.

[23] Pandangan kami ini berpaksikan kepada beberapa keputusan kes yang telah diputuskan. Di antaranya adalah seperti berikut:

[24] Di dalam kes *Hajar Ishak v. PP* [2000] 4 CLJ 46, Zainun Ali J (beliau pada ketika itu) memutuskan seperti berikut:

> Section 305 CPC provides that a person who has been convicted on his plea of guilty is entitled to appeal only against the extent or legality of his sentence. However, the court is entitled to, and will where appropriate, act in revision and set aside the conviction. In the instant appeal, upon revision, the proper order for the court to make would be to set aside the plea of guilty and substitute it with a plea of not guilty and send the case back to the trial court. (*PP v. Mohamed Termizi*)
>
> Thus, after considering the various issues involved in this appeal, and upon considering the submissions of both the learned DPP and counsel for the appellant, this court finds that there are grounds to act in revision and accordingly quash the conviction and sentence and remit the case to be retried before another Sessions Court.

[25] Di dalam kes kami merujuk kepada kes *Mohd Dalhar Redzwan & Anor v. Datuk Bandar, Dewan Bandaraya Kuala Lumpur* [1995] 2 CLJ 209, di mana Mahkamah Rayuan memutuskan seperti berikut:

> I begin by recognising that under s. 305 of the Code, a person who has been convicted on his plea of guilt is entitled to appeal only against the extent or legality of the sentence. However, once such an appeal has been lodged, there is nothing to prevent an appellant from contending at the hearing that the conviction is illegal and requesting the Judge hearing the case to act in revision. Of course the appellant in such a case ought, wherever possible, to give the Court and the Public Prosecutor adequate notice of this, setting out the grounds on which the revision will be sought. A Court hearing an appeal against sentence is entitled to and will where appropriate, act in revision and set aside a conviction. The Malayan Law Journal is replete with pronouncements that support this proposition and I need only mention the decisions in *Low Hiong Boon v. PP* (1948-49) MLJ Supp 135 and *Tang Kee Chie v. PP* (1987) 430 as illustrations of the principle. Reference may also be usefully had to the remarks of Thomson CJ in *Ho Kin Luan v. PP* [1959] 1 LNS 33; [1959] MLJ 159, at 161.
>
> In *Tang Kee Chie* (*supra*), Chong Siew Fai J (now FCJ) stated the principle in the following words:
>
> Learned Counsel for the prosecution, obviously with s. 305 of the Criminal Procedure Code and/or s. 50(2) of the Courts of Judicature Act, 1964 in mind, submitted that since the appellant had pleaded guilty and was convicted on such plea, there could be no appeal against conviction. I need only refer to the following cases to illustrate that convictions were set aside where the accused persons were convicted on their own plea of guilty. *Heng Kim Khoon v. Public Prosecutor, Subramaniam & Anor v. Public Prosecutor*. If the facts disclosed in a case show the absence of an essential ingredient constituting the alleged offence such that no Court would have convicted the accused, the conviction and sentence will be set aside. Even if there is no a right of appeal, this Court as the appellate Court is entitled to look into the record and exercise its power of revision if the record shows that a failure of justice had occasioned.
>
> In *Manokaran v. PP* [1979] 1 MLJ 262, Abdoolcader J. (as he then was) dealt with the revisionary power in the following way:
>
> > I have however not only extensive powers of revision in criminal proceedings under the provisions of s. 325 of the Criminal Procedure Code but even wider powers conferred by s. 35 of the Courts of Judicature Act, 1964, and the Deputy Public Prosecutor agrees that in a case like this where there is an appeal against conviction on a plea of guilty it is open to me to deal with the conviction in the exercise of my power of revision if the circumstances of the case so warrant. I would merely add that in my view notwithstanding the provisions of s. 305 of the Criminal Procedure Code an appeal against a conviction on a plea of guilty will still lie if the charge discloses no offence in law, in which event the conviction itself would be illegal and a nullity.

A

> It is true that the matters complained of in this appeal have been brought to my notice by way of a record of appeal and the proceedings before me are headed in the criminal appeal, but, as I pointed out to, Counsel on both sides of the outset of this hearing, it is nevertheless open to me notwithstanding this to exercise my powers of revision in this matter, and I referred in this regard to the decision of the Privy Council in *In re Chunbidya & Ors* to the effect that **when the High Court has before it on appeal a record of criminal proceedings, it can proceed to exercise its powers of revision if it chooses to do so and make the requisite order** although precluded by another provision in the Criminal Procedure Code from doing so in the appeal.
>
> (penekanan ditambah)

B

C

[26] Rujukan juga dibuat kepada kes *Mohammad Hassan v. PP* [1997] 1 CLJ Supp 485; [1997] 1 BLJ 485; [1998] 5 MLJ 65, di mana Augustine Paul JC (beliau pada ketika itu) menyatakan seperti berikut:

D

> the accused pleaded guilty before the Magistrate' Court at Jasin, Melaka on account of possessing and with intention to sell an admission permit which was found to be a forged permit an offence under s. 56(1A)(b) of the Immigration Act 1959/63 ('the Act') and he was imposed a sentence of one year's imprisonment under s. 57 of the Act. It was uncertain whether the accused admitted the facts as contained in the summary of the facts of the case ('exh P2'). There was no record to show that the facts were explained to the accused. It was also not shown in the record that the guilty plea of the accused was accepted by the learned magistrate. The accused appealed against the sentence.
>
> In considering the proper order to be made, I bear in mind s 305 of the CPC which provides that a person who has been convicted on his plea of guilt is entitled to appeal only against the extent or legality of the sentence. However, once such an appeal has been lodged there is nothing to prevent an appellant from contending at the hearing that the conviction is illegal and requesting the court hearing the appeal to act in revision. The court is entitled to and will, where appropriate, act in revision and set aside a conviction (see *Lee Yu Fah & Ors v. PP*) and *Mohd Dalhar bin Redzwan & Anor v. Datuk Bandar, Dewan Bandaraya Kuala Lumpur* [1995] 1 MLJ 645 (CA)). **Upon revision, the proper order for the High Court to make is to set aside the plea of guilty and and substitute it with a plea of not guilty and send the case back to the trial court (see *PP v. Mohamed Termizi*).**
>
> In the upshot, I set aside the plea of guilty of the accused in the exercise of my powers of revision and substitute it with plea of not guilty and remit the case back to the Magistrate's Court at Jasin for trial.
>
> (penekanan ditambah)

E

F

G

H

I

[27] Berdasarkan kepada nas undang-undang di atas, kami dapati Hakim Mahkamah Tinggi yang bijaksana mempunyai kuasa di peringkat pendengaran rayuan untuk mengakas sabitan dan hukuman bagi pertuduhan di bawah s. 148 Kanun Keseksaan setelah beliau berpuas hati bahawa fakta kes yang dikemukakan oleh perayu tidak memenuhi inti pati pertuduhan.

[28] Biar pun begitu, di dalam melaksanakan kuasa semakannya, Hakim Mahkamah Tinggi yang bijaksana tidak boleh meminda seksyen pertuduhan asal kepada seksyen pertuduhan yang baru seperti yang telah dilakukan oleh beliau, apatah lagi untuk merekodkan sabitan dan hukuman di atas pertuduhan pindaan tersebut. Ini adalah kerana s. 325 Kanun Tatacara Jenayah tidak memperuntukkan kuasa kepada seseorang hakim atas penyemakan untuk berbuat demikian.

[29] Pada hemat kami, setelah Hakim Mahkamah Tinggi yang bijaksana mendapati bahawa elemen di bawah s. 148 Kanun Keseksaan gagal dipenuhi oleh perayu, maka beliau sepatutnya mengetepikan sahaja pengakuan salah yang dibuat oleh responden kedua dan menggantikannya dengan pengakuan tidak bersalah dan seterusnya meremitkan kes tersebut kepada Mahkamah Majistret Kulai, Johor untuk perbicaraan semula.

Kesimpulan

(i) berdasarkan kepada alasan-alasan di atas, kami dapati terdapat persoalan undang-undang yang berbangkit daripada dua persoalan yang dikemukakan oleh perayu ini. Kami sebulat suara membenarkan rayuan perayu;

(ii) sabitan di bawah s. 148 Kanun Keseksaan dan hukuman denda sebanyak RM2,100, gagal bayar tiga bulan penjara oleh Mahkamah Majistret Kulai, Johor adalah dihidupkan semula; dan

(iii) keputusan Mahkamah Tinggi mengetepikan sabitan dan hukuman yang dikenakan oleh Mahkamah Majistret dan menggantikannya dengan sabitan di bawah s. 323 Kanun Keseksaan dan hukuman denda sebanyak RM1,500, gagal bayar dua bulan penjara adalah diketepikan.